

Polk County School District  
No. 04-1760E  
Initiated by: Parent  
Hearing Officer: William F. Quattlebaum  
Date of Final Order: November 10, 2004

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

█, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 04-1760E  
 )  
POLK COUNTY SCHOOL BOARD, )  
 )  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Pursuant to notice, a final hearing was conducted in this case on August 17 through 19, 2004, in Bartow, Florida, by William F. Quattlebaum, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Mark S. Kamleiter, Esquire  
2509 First Avenue, South  
St. Petersburg, Florida 33712

For Respondent: H. Gregory Scharff, Esquire  
Edwards & Scharff, LLP  
2211 Park Boulevard  
Palo Alto, California 94306

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner met the applicable requirements for receipt of a regular high school diploma.

PRELIMINARY STATEMENT

On May 17, 2004, [REDACTED] (Petitioner) filed a Request for Due Process Hearing with the Polk County School Board (Respondent). Respondent forwarded the request to the Division of Administrative Hearings on May 18, 2004. By Notice of Hearing dated May 19, 2004, the case was scheduled to be heard on June 8 through 11, 2004.

On May 25, 2004, the parties filed a Joint Motion to Reschedule the Hearing. In accordance with the motions and the participant's schedules, the case was scheduled for August 17 through 20, 2004.

On August 6, 2004, Petitioner filed a Motion for Hearing on Petitioner's Motion for Emergency Injunction (Stay Put) and Motion for Determination of Burden of Proof and Order of Proceeding. On August 8, 2004, Respondent filed a Motion to Clarify and/or Set Issue for Hearing. In the motion, Respondent asserts that Petitioner has graduated from high school with a regular diploma, and that the Division of Administrative Hearings has no authority to conduct a post-graduation review of an Individual Education Plan (IEP) or to render a post-graduation determination of the educational program provided to Petitioner. On August 10, 2004, Petitioner, filed a Clarification of Issues for Hearing and Memorandum of Law seeking to raise a number of

issues related to the IEP in effect at the time Petitioner completed the requirements for the standard diploma. Also on August 10, 2004, Respondent filed a Response to the Petitioner's Motion for Determination of Burden of Proof.

On August 10, 2004, a telephonic hearing was conducted on the pending motions. Based upon review of the motions and attachments and after hearing the arguments presented by the parties, the order of case presentation was established by Order entered on August 11, 2004, and the issue was defined as "whether the Petitioner met the requirements to receive a regular high school diploma." By separate Order entered on August 11, 2004, the Petitioner's Motion for Emergency Injunction was denied.

At the hearing, Petitioner presented the testimony of [REDACTED] (the student's [REDACTED]), Dr. Tashawna Duncan, Teri Bronson, and Robert Thornhill. Petitioner's Exhibits numbered 1 and 4 were admitted into evidence. Respondent presented the testimony of Bruce Tonjes, Wilma Ferrer, Betty E. Clemons, and Sherwin Holmes and had Exhibits numbered 3, 4, 9, and 11 admitted into evidence.

The three-volume Transcript of the hearing was filed on September 13, 2004. The parties initially stipulated to a deadline of October 8, 2004, for filing proposed orders, and subsequently stipulated to an extension of the deadline to October 15, 2004. Respondent's proposed order was filed on October 15, 2004. Petitioner's proposed order was filed on October 18, 2004.

#### FINDINGS OF FACT

1. Petitioner is a [REDACTED]-year-old [REDACTED] with Asperger's Syndrome, who, prior to May 2004, received exceptional education services from Respondent. [REDACTED] parents are [REDACTED] legal guardians.

2. At all times material to this case, the educational goal established for Petitioner was to graduate from high school with a regular high school diploma.

3. Pursuant to Florida law, in order for a student to graduate from the Polk County School District with a regular high school diploma, a student must pass the required portions of the Florida Comprehensive Assessment Test (FCAT), receive 24 credit hours (with the various credits being earned in designated academic areas) and attain a 2.0 cumulative grade point average.

4. On or about February 23, 2004, Respondent met with Petitioner's parents in an annual IEP review meeting, during which Respondent notified Petitioner's parents that, based on [REDACTED] academic progress, Petitioner would meet the requirements for high school graduation with a regular diploma at the end of the current school semester. An IEP was prepared which set forth the anticipated graduation. The parents immediately objected to the proposed graduation and questioned whether certain services addressed in prior IEP's had been provided.

5. By letter dated April 20, 2004, Petitioner's parents requested Respondent to convene another IEP meeting or proceed to mediation to address their dissatisfaction.

6. By letter dated May 7, 2004, Respondent advised that a new IEP meeting would be scheduled. An IEP Meeting Notice also

dated May 7, 2004, advised that an IEP meeting was scheduled for May 21, 2004.

7. Petitioner's grades were due to be, and were, reported by ■■■ teacher to the school administration on May 13, 2004, at which point Petitioner obtained the remaining academic credits required to meet the requirements to receive a regular high school diploma.

8. Petitioner filed a request for a due process hearing on May 17, 2004.

9. The evidence establishes that Petitioner has passed the required math and reading portions of the FCAT. The passing score for the math portion for the FCAT was 295; Petitioner scored 329. The passing score for the reading portion of the FCAT was 287; Petitioner scored 296.

10. Petitioner also passed the writing portion of the FCAT (passage of which is not required for graduation). Two anonymous graders utilizing a standard rubric to evaluate student responses score the FCAT writing portion.

11. Petitioner passed the FCAT on ■■■ first attempt. At the time Petitioner passed the FCAT, 36 percent of Polk County students did not successfully pass the required portions of the test on their first attempt.

12. Petitioner's academic record indicates that ■■■ obtained the required number of credit hours in the appropriate disciplines. ■■■ completed high school with a cumulative grade point average of 3.09. There is no evidence that the academic

record is incorrect or inaccurate, insofar as it reflects the courses completed by, and credits awarded to, Petitioner.

13. Apparently pursuant to previous IEP's, Petitioner attended class in a separate building located adjacent to [REDACTED] School and on the school's property. Petitioner was the only student in the classroom and had both a teacher and a paraprofessional assigned to [REDACTED].

14. Bruce Thornhill taught Petitioner in the 11th and 12th grade. Mr. Thornhill testified at the hearing and appears to have enjoyed Petitioner and the experience of teaching [REDACTED].

15. Several times weekly, Teri Bronson, an Exceptional Student Education coordinator for the Polk County School System, visited Mr. Thornhill's class. Ms. Bronson also testified during the hearing. Her testimony was consistent with that presented by Mr. Thornhill as to classroom routine.

16. The evidence establishes that Mr. Thornhill taught the school-prescribed academic curriculum to Petitioner in an acceptable manner. Required textbooks were utilized, and, according to Mr. Thornhill, the texts were completed as required. There is no credible evidence that a student must complete all of a textbook to receive academic credit in a course.

17. Mr. Thornhill maintained written grades when the class work was completed in written form. Tests were often multiple-choice or "matching" type, but some questions were "open-ended" and required extended response from Petitioner. Mr. Thornhill administered some tests verbally to Petitioner. There is no credible evidence that verbal administration of tests to

Petitioner was inappropriate. At the end of each grading period, Mr. Thornhill would assign a grade for the course based on the written work and his observation of Petitioner's performance.

18. Petitioner asserts that Petitioner was incapable of performing the work required to achieve academic credit in various courses. At the hearing, Petitioner offered the testimony of Dr. Tashawna Duncan to refute the evidence that Petitioner was capable of accomplishing the academic work required to earn credit in the required courses. Dr. Duncan met twice with Petitioner for a total of six to seven hours of evaluation, including academic and assessment testing.

19. At the hearing, Dr. Duncan reviewed course description materials obtained from the Florida Department of Education's internet site, and testified that, in her opinion, Petitioner was not capable of accomplishing all of the elements identified in the reviewed materials sufficiently to have "mastered" the material for each course. The evidence fails to establish that a student must "master" all of the elements identified in each course description in order to receive credit for a course.

20. Specifically, Dr. Duncan asserted that Petitioner lacks sufficient critical thinking skills to permit Petitioner to write reports, an element set forth in several course descriptions referenced by Dr. Duncan. Mr. Thornhill testified that Petitioner was capable of and did write reports. Mr. Thornhill specifically recalled one paper completed by Petitioner wherein Petitioner reviewed the Amendments to the U.S. Constitution and identified how the Amendments could apply to an imaginary planet

of the Petitioner's creation (indicating that Petitioner is capable of some level of critical analysis beyond that to which Dr. Duncan opined). The fact that Petitioner successfully completed the writing portion of the FCAT supports Mr. Thornhill's evaluation and his recollection of Petitioner's abilities and achievements.

21. Petitioner was able to complete math problems without assistance. Dr. Duncan expressed no concerns related to Petitioner's math abilities. Dr. Duncan also acknowledged that, based on an academic evaluation she completed on August 11, 2004, Petitioner's reading and math abilities were on "grade level."

22. As to Petitioner's successful completion of the FCAT, Dr. Duncan stated that she could offer no explanation as to how Petitioner passed the test.

23. The evidence establishes that the grades assigned by Mr. Thornhill to Petitioner reflected Petitioner's completion of coursework and that Petitioner completed sufficient course requirements to earn the academic credits reflected on the school records.

#### CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties to this proceeding. § 1003.57(5), Fla. Stat. (2004).

25. The Individuals with Disabilities Education Act, 20 U.S.C. Section 1400, et seq. (IDEA), provides the right of all disabled children to a free appropriate public education.



26. The IDEA defines "free appropriate public education" at 20 U.S.C. Section 1401(8), as follows:

The term 'free appropriate public education' means special education and related services that-

(A) have been provided at public expense, under public supervision and direction, and without charge,

(B) meet the standards of the State educational agency,

(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

27. In order to satisfy the IDEA requirement of a free appropriate public education, the School Board must provide personalized instruction with sufficient support services to permit the handicapped child to benefit educationally from that instruction. The School Board is not required to maximize the child's educational benefit or guarantee a specific level of success. The child is entitled to an individual plan of instruction that contains goals and objectives reasonably calculated to provide educational benefit. The issue at an administrative hearing is to determine whether the School Board has complied with statutory procedures, and then determine whether the individualized program developed through such

procedures is reasonably calculated to enable the child to receive educational benefits. Board of Education v. Rowley, 458 U. S. 176 (U.S. 1982); JSK v. Hendry County School Board, 941 F.2d 1563 (11th Cir. 1991).

28. Petitioner is a student with disabilities entitled to receive educational services through ■■■ twenty-first birthday. See 20 U.S.C. § 1412(1)(a). However, once a student with a disability graduates from high school with a regular high school diploma, the school district's obligation to provide a free appropriate public education ends. See 34 CFR § 300.122(a)(3)(i).

29. Section 1003.43, Florida Statutes (2004), sets forth the general minimum requirements for students to graduate from a state high school with a regular diploma. School districts are required to adopt graduation standards in accord with state minimum standards. The Polk County School District has adopted such standards as identified herein.

30. In this case, Petitioner passed the required portions of the FCAT, exceeded the required cumulative grade point average, and earned sufficient academic credit on or before May 13, 2004, to meet the standards set by the State of Florida and adopted by the Polk County School District for graduation from ■■■ School with a regular diploma, at which time Respondent was under no obligation to provide further services.

31. It is unclear whether an administrative law judge has the authority in a due process hearing to address the central

issue raised in this case, i.e., whether a student's receipt of a regular high school diploma is valid. An administrative law judge has the authority only to consider the appropriateness of an IEP. Hendry County School Board v. Kujawski, 498 So. 2d 566 (Fla. 2d DCA 1986). In any event, the administrative law judge in this case has no authority to require that Respondent provide any additional services to Petitioner.

32. Petitioner's request for due process hearing to challenge the IEP was filed after the student had met the requirements to receive a regular high school diploma and after the school district's obligation to provide a free appropriate public education passed. Once Petitioner graduated from the public school system with a regular diploma, the school district was not obligated to provide additional educational opportunities to Petitioner. Absent the authority to conduct an after-the-fact review of IEP, where Petitioner has subsequently graduated high school with a regular diploma prior to the challenge to the IEP, the Division of Administrative Hearings does not have jurisdiction to consider whether or not Petitioner student received a free appropriate public education. A. W. v. School Board of Palm Beach County, (DOAH Case No. 00-0878E, Final Order entered April 10, 2000).

#### FINAL ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Petitioner's Request for Hearing is DISMISSED.

DONE AND ORDERED this 10th day of November, 2004, in Tallahassee, Leon County, Florida.

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WILLIAM F. QUATTLEBAUM  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of November, 2004.

COPIES FURNISHED:

Eileen L. Amy, Administrator  
Exceptional Student Education Program  
Administration and Quality Assurance  
Department of Education  
325 West Gaines Street, Suite 614  
Tallahassee, Florida 32399-0400

Mark S. Kamleiter, Esquire  
2509 First Avenue, South  
St. Petersburg, Florida 33712

H. Gregory Scharff, Esquire  
Edwards & Scharff, LLP  
2211 Park Boulevard  
Palo Alto, California 94306

R. J. Thornhill, Superintendent  
Polk County School Board  
Post Office Box 391  
Bartow, Florida 33831-0391

Daniel J. Woodring, General Counsel  
Department of Education  
1244 Turlington Building  
325 West Gaines Street  
Tallahassee, Florida 32399-0400

NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
- b) brings a civil action within 30 days in the appropriate state circuit court pursuant to Section 1415(i)(2)(A) of the IDEA and Section 1003.57(5), Florida Statutes; or
- c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(5) and 120.68, Florida Statutes.